

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**SABOTT BEAUTY SUPPLIES AND
EQUIPMENT,**

Respondent.

**Docket No. FMCSA-2007-27214¹
(Eastern Service Center)**

ORDER TERMINATING PROCEEDING AND CLOSING DOCKET

On October 10, 2006, the Pennsylvania Division Administrator of the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) charging Respondent Sabott Beauty Supplies and Equipment with one violation of 49 CFR 172.200(a), offering a hazardous material without preparing a shipping paper; one violation of 49 CFR 173.22(a)(2), offering a hazardous material in an unauthorized package; and one violation of 49 CFR 173.24(b)(1), offering or transporting hazardous materials in a package which has an identifiable release of hazardous materials to the environment. The NOC proposed a civil penalty of \$7,910. On February 26, 2007, I ordered that the matter be resolved through binding arbitration.

The proceeding was subsequently assigned to the Honorable Jerome M. Drummond of the U.S. Civilian Board of Contract Appeals. On August 20, 2009, the Field Administrator for the FMCSA's Eastern Service Center (Claimant) submitted a Notification of Settlement to Judge Drummond and requested that he dismiss the arbitration proceeding. Under the Settlement Agreement, which was executed on August 19, 2009, and adopted as a Final Order,² Respondent agreed to pay \$6,328 in 10 consecutive monthly installment payments. Although the Settlement

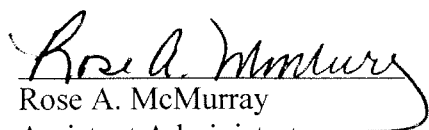
¹ The prior case number was PA-2006-0192-US0537.

² Settlement Agreement, paragraph 7.

Agreement does not expressly hold any amount of the penalty proposed in the NOC in abeyance, paragraph 5 of the agreement provides that failure to comply with the payment plan may result in the loss of any reduction in civil penalties asserted in the NOC.

When the parties agree to settle a case after it has been assigned to an arbitrator, the arbitrator normally dismisses the arbitration proceeding and returns the matter to FMCSA for action in accordance with the Settlement Agreement. Dismissal of the arbitration proceeding is essentially a formality since the Assistant Administrator, not the arbitrator, is authorized to approve or reject Settlement Agreements.³ Although more than eight months have elapsed since Claimant requested the arbitrator to dismiss the arbitration proceeding and return the matter to FMCSA, the arbitrator has not yet acted on this request. There is nothing in the Agency's Rules of Practice or the Agency's Guidance for the Use of Binding Arbitration⁴ that prevents me from considering the Settlement Agreement when the arbitrator fails to respond to a request to dismiss the arbitration proceeding following settlement of a case. I conclude that the Settlement Agreement is in the public interest and it is accepted.

THEREFORE, *It Is Hereby Ordered*, the Settlement Agreement is the Final Order in this matter, the proceeding is dismissed, and the docket is closed.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

5.5.10
Date

³ See 49 CFR 386.22(c).

⁴ See *Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 69 Fed. Reg. 10288, March 4, 2004.

CERTIFICATE OF SERVICE

This is to certify that on this 5 day of May, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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